IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Nimba Ram Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.58/2006

DATE OF ORDER :: October 12, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr. Abhishek Mirdha, for the petitioner.
Mr. Ashok Upadhyaya, P.P.
Mr. Rahul Sharma, for non-petitioner No.2-complainant.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 16.11.2005 passed by the Chief Judicial Magistrate, Sirohit (for short 'the trial court' hereinafter), whereby the trial court took the cognizance of the offences under sections 420 and 408 I.P.C. and issued the process against the petitioner.

I have heard learned counsel for the petitioner and the Public Prosecutor as also the counsel appearing for the complainant. Carefully gone through the order impugned as also

the material placed on record.

On an FIR lodged by non-petitioner No.2 with police station, Kotwali, Sirohi for the offences under sections 420 and 408 I.P.C., the police instead of investigating the matter, straightway filed the FR on the ground that the police has no jurisdiction to enquire into the offences. That FR is said to be accepted by the trial court while reserving the rights of the complainant. Meanwhile, the police made request to the court to return the FR as the filing of FR was on the ground of jurisdiction. The FR was handed over to the police and thereafter, the police thoroughly investigated the matter and filed the challan against the petitioner under sections 420 and 408 I.P.C. On the basis of the material placed before it, the trial court came to the conclusion that there is a ground to proceed against the petitioner and accordingly the trial court took the cognizance and issued the process. The allegation against the petitioner is that he was entrusted a sum of Rs.52000/- by the owner of the truck. The petitioner being the driver of the truck was to return the amount to the owner, which according to the prosecution case, he has misappropriated. The owner came to know about the occurrence that the petitioner fled away leaving the truck at Ramdev Hotel, Sirohi instead of returning the amount, which was entrusted to him as he was servant/agent of

the owner of the truck i.e. the non-petitioner No.2, the petitioner is alleged to have committed criminal misappropriation or of criminal breach of trust as also by deceitful means, he misappropriated the amount.

So far as criminal misappropriation is concerned, sub-section (4) of section 181 Cr.P.C. provides that any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person. In the circumstances, therefore, in my view the SHO, Police Station Kotwali, Sirohi at first hand wrongly filed the FR stating that the said police station has no territorial jurisdiction, however, subsequently, the very matter was investigated by the officer of that police station and challan has been filed and in my view rightly so.

Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in Surendra Singh vs. State of Bihar, 2006(1) WLC (SC) Cri. 380. The facts of the instant case are entirely different from that of facts of Surendra Singh's case (supra). In that case, after investigation the police filed the

negative final report finding no such occurrence has taken place and, therefore, the Magistrate accepted the negative final report and issued the notice to the complainant and on the same day by a subsequent order, took the cognizance. Therefore, the aforesaid decision in Surendra Singh vs. State of Bihar (supra) is of no help to the petitioner. It is settled law that powers under section 482 Cr.P.C. are to be exercised sparingly and consciously in order to secure the ends of justice. Quashing of proceedings in the matter in hand, instead of securing the ends of justice, would defeat the ends of justice and, therefore, in my view it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any Court warranting interference in the inherent jurisdiction.

The petition is, therefore, dismissed. Ad interim stay order dt. 16.5.2006 is vacated. The stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-